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In re Application of	:	
Banatre et al.	:	
Application No.: 09/831,726 and 09/980,273	:	DECISION
PCT No.: PCT/FR00/01350	:	
Int. Filing Date: 18 May 2000	:	MERGING
Priority Date: 19 May 1999	:	
Attorney Docket No.: 45876/ABP10175	:	APPLICATION
For: Mobile Telephony Device And Process Enabling	:	
Access To A Content-Sensitive Service Using	:	FILES
The Position And/Or Identity Of The User	:	

This is in response to the communication filed on 05 January 2005.

### **BACKGROUND**

On 18 May 2000, applicants filed international application PCT/FR00/01350, which claimed priority of an earlier application filed 19 May 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 30 November 2000. A Demand for international preliminary examination electing the United States was filed on 14 December 2000, which was prior to the elapse of 19 months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 19 November 2001.

On 15 May 2001, applicants, through the law firm of Rabin & Champagne, filed a "Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371," which indicated that the filing was intended as a national stage filing of PCT/FR00/01350 pursuant to 35 U.S.C. 371. The Transmittal Letter was accompanied by, *inter alia*, the required basic national fee, but was not accompanied by a power of attorney. The submission was assigned application number 09/831,726 ("the '726 application").

On 20 June 2001, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants in the '726 application, requiring the submission of an executed oath or declaration of the inventors and a surcharge under 37 CFR 1.492(e).

On 19 November 2001, applicants, through the law firm of Christie, Parker & Hale, filed another initial submission under 35 U.S.C. 371 to enter the U.S. national phase for PCT/FR00/01350. This submission was assigned application number 09/980,273 ("the '723 application").

On 23 August 2002, a decision was mailed in the '723 application, indicating that applicants, "represented by other counsel" (i.e., Rabin & Champagne), had already filed a

national stage application in the U.S. (namely, the '726 application).

On 17 October 2003, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to counsel in the '726 application, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Notification of Missing Requirements mailed on 20 June 2001.

### **DISCUSSION**

Initially, review of the application file reveals that the Notification of Missing Requirements mailed on 20 June 2001 in the '726 application was mailed prior to the expiration of the thirty-month time period to enter the national stage in the United States as an Elected Office provided by 37 CFR 1.495. As such, the Notification of Missing Requirements was premature and is hereby **VACATED**. Accordingly, the Notification of Abandonment mailed on 17 October 2003 was also inappropriate, and is hereby **VACATED**.

In that there can only be one U.S. national stage application corresponding to a specific international application, the second application file wrapper, number 09/980,273, was created in error. The papers present in application number 09/980,273 will be merged with the '726 application. Therefore, all future correspondence concerning the national stage of international application PCT/FR00/01350 under 35 U.S.C. 371 should be directed to application number 09/831,726. Application number 09/980,273 will be placed in inactive status. Because the 05 January 2005 submission filed in the '273 application included a signed power of attorney appointing counsel from the firm of Christie, Parker and Hale, all future correspondence will be sent to that address.

### **DECISION**

The holding of abandonment is **WITHDRAWN**.

The \$130.00 surcharge under 37 CFR 1.492(e) is being charged to counsel's Deposit Account no. 03-1728, as authorized by the Transmittal Letter filed on 19 November 2001.

This application is being returned to the National Stage Processing Branch for further processing. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **05 January 2005**.



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